

Parish Training – Enforcement Feedback

At the Parish training on the 5th November we discussed a wide range of issues, concerns and ideas for improvement. Below is a consolidated list of the top 15 ideas/observations received. The following pages provide a response, highlighting changes we are making and, where it is not possible to action an issue, we have explained why the request cannot be taken forward.

Issues/Requirements

1. Information about how to engage with Enforcement Officers:
 - a. Who to contact?
 - b. Dedicated Phone number
 - c. Main email?
 - d. Duty Officer?
2. Add contact phone number to acknowledgement letters
3. Publication of cases on weekly list
4. Timeframe of engagement
5. Building relationships
6. Aide memoire for enforcement – online
7. Update Parishes on legislation changes
8. Publish Enforcement Notices online
9. Updates sent to the Clerks
10. Explain Expediency
11. Explain any reasons for delay
12. FAQs
13. Communication preference
14. Recognise the value of the PC/TC
15. Awareness of PC/TC meetings/timescales

Actions/Responses

1. The Parishes requested alternative ways to contact the Enforcement Team in order to improve communications and know how to report suspected breaches of control:
 - a. In terms of **who to contact**, all reports should be sent to the Enforcement inbox in the first instance. Whilst it is acceptable to email officers directly – particularly if they have prior knowledge of a site/case - there will be occasions when officers are on leave and therefore complaints can get lost or go unregistered. To avoid any delay in having a complaint registered and investigated we recommend emailing the generic inbox. This also allows management to monitor the level of work coming in and ensure it is evenly distributed around the team.
 - b. The **dedicated number** to use to contact enforcement is 01225 394041 (then press option 5). This will get you through to the Planning Information Officers who can then field calls to the appropriate officer.
 - c. The **main email** to use is planning_enforcement@bathnes.gov.uk this is published on the enforcement pages of the website and in the back of the Local Enforcement Plan.
 - d. From January 2016 there will be a **duty officer** available on a Monday, Wednesday and Friday for general enquiries. Due to the size of the team it is not possible to offer this service 5 days a week however there is a planning duty officer available daily.
2. The case officer's direct line will be added to the acknowledgement letter when a case is registered so that complainants can better engage with the officer.
3. It was requested that we publicise new enforcement cases received with the weekly list. Unfortunately we are unable to do this for reasons of data protection. The Information Commissioners Office (ICO) (in respect of planning and planning enforcement) advises that before a formal enforcement notice has been served, no details of owners, occupiers and/or other persons with an interest in the property subject to an alleged breach of planning control should be available on an online enforcement database or on documents linked to that database. This is because doing so would involve the publication of sensitive information relating to those individuals, rather than to the property, and it is likely that the Data Protection Act would be breached by making such information available.

Enforcement Notices form part of the public register and it is agreed that Officers will send a copy of Notices to Parish and Town Councils (as well as Ward Members) once the Notice is issued.

4. With regard to the **timeframe for engagement** it is agreed that we will create an example flow chart of the stages of an investigation. This will highlight where delays may occur in an investigation and also indicate when it would be appropriate to provide an update. At present the Local Enforcement Plan contains a commitment to providing an update every 4-6 weeks or when there is something to provide an update on. This commitment remains and the Officers have been reminded of the need to keep complainants informed, in addition the IT system has been updated to trigger a reminder to Officers to update complainants.
5. In respect of **building relationships** it was asked whether we could disclose to the Parish any case where there have been 2 or more complaints received. The ICO advice above applies and therefore we could not disclose or publish cases however we would encourage the Parishes to request that their Parishioners engage with them so that the Parish can be listed as an interested party in the first instance.

6. It was requested that an **aide memoire** for enforcement is made available. The Local Enforcement Plan (LEP) should be the main reference point for how cases will be dealt with. The LEP is to be reviewed and updated as is the website. Links to Government guidance will be published online however the National Planning Practice Guidance pages on line are a handy 'go-to' resource:

<http://planningguidance.communities.gov.uk/blog/guidance/ensuring-effective-enforcement/>

7. It was requested that we update Parishes on **legislation changes**. We are unable to produce a full list of all legislative changes or provide a summary due to the complexity and level of work that this would involve however it is possible for anyone to sign up to the Planning Portal to receive automatic notifications when changes do occur:

<http://www.planningportal.gov.uk/planning/planningpolicyandlegislation/reform>

You can also sign up to the National Planning Practice Guidance pages of the Government to receive updates when guidance changes:

http://planningguidance.communities.gov.uk/wp-admin/admin-ajax.php?action=dce_login

8. It has been agreed that we can **publish Enforcement Notices online**. This will require additional work to the website but Notices form part of the public record and therefore should be accessible in the same way planning applications are. Please note, we will only be able to publish the Notice itself and not the background information relating to the site or investigation. It is anticipated that this can be rolled out in early 2016.
9. It was requested that updates are sent to the **Clerks**. This point is agreed and officers will send their updates to the clerks. We have had occasions where several members of the same Parish have sent requests to Officers which results in additional resources spent answering the same question to the same group. To avoid multiple avenues of correspondence we would request that the Clerks are used as the main point of contact/communication.

In cases where the Parish/Town Council are an interested party in an investigation Officers will provide a justification for why a case has been closed

10. It was requested that we **explain expediency**. Expediency is set out in the LEP however for ease of reference the relevant section is extracted here:

In considering whether it is expedient to take enforcement action the decisive issue for the Council will be whether the breach of control would unacceptably affect public amenity, whether it would give rise to a serious risk to public safety or the existing use of land and buildings merit protection in the public interest. Any action taken will be commensurate with the breach of control to which it relates.

In considering whether to take enforcement action the Council will not give weight to the fact that development may have commenced. It is not a criminal offence to carry out development without planning permission (unless it involves a listed building). It is merely unauthorised and no criminal offence has been committed. It is therefore important that unauthorised developments are treated on their individual merits in the same way as proposed developments. The test to be applied will be "would planning permission have been granted for this development had it been the subject of a planning application"?

Where it is assessed that it is likely that planning permission would be granted for the development, the person responsible will normally be invited to submit a retrospective planning application. It will generally be inappropriate to take formal enforcement action against a trivial or technical breach of control, which causes no harm to amenity in the locality of the site.

The person against whom an enforcement notice is served has rights of appeal which must be respected although this may result in some delay in securing a resolution.

In considering whether to take enforcement action, the Council will not give weight to non-planning considerations. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds. Local opposition or support for unauthorised development will not be given weight unless it is founded on valid planning reasons.

11. We were asked to **explain any reasons for delay.**

Each case is unique and therefore there is no one factor that will cause a delay. When assessing a compliant officers are required to conduct an investigation in the first instance including site visit and history check of the site, obtaining ownership details/company information etc. this can take several weeks. Once it is established that a breach has occurred, if appropriate an application will be requested. We usually offer 28-56 days to compile and submit an application, this timeframe has to be reasonable to allow the applicant to commission drawings, surveys, reports etc. Once submitted the planning application will be subject to the usual 8 or 13 week target timeframe. Whilst an application is being considered, it would not be expedient to issue an enforcement notice as the breach may be remedied. If the planning application is refused there is a right to appeal, for household applications, applicants have 12 weeks to submit an appeal, in all other cases they have 6 months. Depending on the severity of the breach it may be appropriate to serve a Notice once the application is refused however there is also a right to appeal the Notice. Whilst at appeal, the Notice will be held in abeyance. In the event that an appeal fails the Notice will take effect and there will be a timeframe to comply (this can be anything from immediate to a year or longer depending on what the nature of the breach is). Only once the timeframe to comply has passed can the Council consider instigating legal action however this would be subject to the tests of Public Interest set out by the CPS.

At the Enforcement training we showcased a live case that has taken over 3 years to get to a point of prosecution. This demonstrated how the enforcement process can be delayed by factors beyond the control of the Council. Often there will be long periods of delay whilst due process is being followed. Officer will provide an update as to case progress and where appropriate will advise if it is likely that there will be no update available for a period of time.

12. It was requested that **Frequently Asked Questions** are published. FAQs have been compiled and considered by the team and drafted, a copy of these can be found attached to this document, and these will also be published online.
13. The **communication preference** is email. As enforcement is a formal legal process Officers need to maintain accurate files and therefore it is preferable that we communicate by email. This also helps with audit and allows managers to identify if there is an issue with officers not communicating.
14. Officers **recognise the value of the PC/TC.** Given the size of the district compared to the number of staff we have, we rely on the Parishes and Town Councils as the “eyes on

the ground". Where a PC/TC is an interested party or complainant it would be useful if they could provide as much information to the Officer to assist with the investigation.

Sometimes people will not wish to report breaches through fear or repercussions. The Parishes could be used to channel such complaints however this would require parishioners engaging with the Parishes

15. At the training, Officers discussed the benefit of being aware of **PC/TC meetings/timescales**. Whilst we may not be able to provide a rolling update each month it would be useful when contacting an officer if the Clerks could advise the timescales for their meetings, this way we can ensure we provide appropriate updates in the most appropriate timeframe.

Key Facts

The following is a summary of the key facts that should be considered when looking at a potential breach of planning control (note this is not an exhaustive list but it is pointers for consideration):

- Unauthorised development is not illegal (unless it relates to a listed building)
- Enforcement is not punitive and remedy should be sought in the first instance – it should not be used as a tool to punish.
- Negotiation is critical
- The enforcement process is lengthy due to the statutory processes that must be followed
- Multiple opportunities exist to apply for retrospective consent and appeal any decisions issued
- Formal Notices are a last resort not the “go to” answer
- The Council must follow planning law and the guidance set out in the National Planning Practice Guidance
- Technical breaches are unlikely to result in action (this could include failure to submit details required by a condition at the correct time)
- Large development sites:
 - There will be times when issues occur
 - It is not always appropriate to pursue formal action
 - Consideration must be given to the scale and magnitude of the offence in light of scale of operation as a whole – i.e. 10 incorrect vehicle movements in a month to a site that receives over 50 movements daily would not be sufficient to demonstrate a persistent breach/issue.
- Precise information is essential
- We cannot notify Members or Parishes due to provisions of DPA and FoIA when cases are received but we will notify when we serve a Notice.
- Enforcement is discretionary not statutory
- Officers must have regard to the public interest test, evidential test and the scale of planning harm before commencing formal action.

FAQs

1. **If someone builds something that is different from what they got planning permission for, does that mean enforcement action will be taken automatically?**

No. Although the Council does not condone building anything that is different to a proposal that has planning permission and it is extremely unwise and risky to do so, planning permissions do not represent the only form of proposal on that site that may be acceptable to the authority. Therefore, enforcement action would only be taken against a different and unauthorised building to that previously approved if it was considered to result in unacceptable harm by the Council.

2. **If someone breaks planning regulations shouldn't they always be punished as a matter of principle, and made to remove or stop whatever they have done?**

Not according to planning law. Other than in the case of unauthorised display of advertisements or works to listed buildings, carrying out building works or a change of use without the necessary planning permission is not a criminal act and, initially, not subject to penalties such as fines or imprisonment. Later in the process, if an enforcement notice has been served and not complied with, then court action and penalties such as fines can be imposed. However, planning enforcement is a discretionary power of a local authority that should only be used to put right any harm caused by a failure to comply with planning control. When there is no harm, or it is insignificant, enforcement action is generally not justified. A harm requiring enforcement action would normally occur when the breach in question results in an unacceptable departure from relevant planning policies that would have justified refusing planning permission if it had been the subject of a planning application.

3. **Doesn't planning law mean some people who break the regulations get away with it?**

In the first instance, the objective of planning enforcement is generally not to punish those who break the regulations but to remedy any harm caused by unlawful actions. However, people who do not get the necessary planning permission for something they are doing risk the possibility of serious consequences from enforcement action that can be extremely costly, and failure to comply with an enforcement notice can result in court action and legal penalties. It may also be difficult or impossible to sell a property if planning permissions have not been properly obtained or followed.

4. **Can you apply for planning permission to keep a building or continue a use that did not get the necessary planning permission?**

Planning regulations do allow someone to apply for planning permission retrospectively after they have carried out unauthorised works or a use and the law requires the Council to accept and consider them. Such retrospective applications are considered on their planning merits in the same way as other applications and are not more likely to be approved or refused because they are submitted after the event. Planning permission may be granted retrospectively if the application proposal is considered to be acceptable but if this is not the case and permission is refused then it is likely that enforcement action will follow.

5. Do all alterations to houses require planning permission?

No. Some minor alterations may not require planning permission at all. In such cases, no enforcement action can be taken.

6. Is building without planning permission from the Council always unlawful and potentially subject to enforcement action?

No. Planning law allows some types and sizes of buildings, and some changes of use to take place without the need to get planning permission from the Council, and these are sometimes referred to as 'permitted development'. For example, many domestic extensions and out-buildings to houses are permitted development, but those wishing to carry them out should have this confirmed prior to starting any building by the Council's Development Control department. If you complain to the planning enforcement team about a building or use being carried out, officers will initially assess whether it requires planning permission. If it is a type or size that does not, perhaps because it is permitted development, then it will not be possible for the Council to consider taking enforcement action, or to assess its acceptability as is done with a planning application proposal, (for example in terms of neighbourliness).

7. What will the Enforcement Officer do about a complaint of an alleged breach of the planning regulations, and how long will it take?

The officer will investigate the complaint and, as a first step, assess whether there has actually been a breach of planning control regulations. If there has not, then the complainant will be told and no further action will be taken. If there appears to have been a breach then a number of options for action are available ranging from informal requests to voluntarily stop or remove unauthorised work to serving formal enforcement notices requiring remedial action. These options are set out in Local Enforcement Plan.

There is a right of appeal against planning enforcement notices and this, in addition to the work that is required to properly investigate some cases, means that the process of resolving a breach in regulations can take a long time. The Council recognises how frustrating this delay can be and will try to keep complainants informed at the key stages but it is important to understand that it is necessary for the Council to go through the procedures and requirements of the planning legal system.

8. What happens if you fail to comply with a condition on a planning permission?

The Council will need to consider the scale of the breach and what the harm is before considering issuing a Notice. As there is no right to appeal a breach of condition notice – and failure to comply is a prosecutable offence - Officers will need to satisfy themselves that the breach reported relates to the reason for the condition and that the breach can be evidenced. For example a breach of operating hours on a site may be having a detrimental impact on residential amenity however if the condition was applied in the interest of highway safety and no highway safety issue are arising, it would not be appropriate to serve a Breach of Condition Notice as the reason for the Notice would not be valid. Before serving a Notice the Council must be satisfied that the breach is persistent rather than sporadic and that it can be evidenced. Without evidence the Council would not satisfy the evidential test for prosecution and therefore could not take any further action.

9. What are priority cases?

<i>Category</i>	<i>Type of development</i>
Category 1 – High priority	When irreversible and serious damage to the environment or public amenity would result. Examples include works to protected trees; works affecting the character of a listed building; demolition works in a conservation area; serious traffic hazards; contamination and or pollution being created, unauthorised caravan sites, or other development where there is actual or imminent residential occupation.
Category 2 – Medium priority	This covers less immediate yet still serious and harmful breaches and is likely to include breaches where building works have just commenced, where severe harm is being created and non-compliance with certain planning conditions (particularly pre-commencement conditions).
Category 3 – Low priority	This category relates to breaches that are likely to remain stable and that are unlikely to give rise to any severe or lasting harm to amenities. Such breaches may include untidy sites, non-compliance with other planning conditions, erection of satellite dishes, the unauthorised display of advertisements and the erection of fences.

10. Why have Bath & North East Somerset not take enforcement action?

In some instances a reported breach may not actually be a breach of control, it may not constitute development or it may be permitted development. No formal action could be taken in these circumstances.

It will not always be expedient to take formal enforcement action, ultimately the Council has to satisfy themselves that it is in the public interest to commence formal action. Where formal action is not taken, or a case is closed Officers will advise the complainant of the decision and justification for the decision.